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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,625	09/06/2006	Barrie Kirk	PAT 2253W-2	8043
26123 7590 03/24/2009 BORDEN LADNER GERVAIS LLP Anne Kinsman WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA				
EXAMINER NGUYEN, TAN QUANG				
ART UNIT 3661		PAPER NUMBER		
NOTIFICATION DATE 03/24/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipinfo@blgcanada.com  
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akinsman@blgcanada.com

### Office Action Summary

**Application No.**

10/598,625

**Applicant(s)**

KIRK ET AL.

**Examiner**

TAN Q. NGUYEN

**Art Unit**

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-19 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAIL ACTION

### *Notice to Applicant(s)*

1. This application has been examined. Claims 1-19 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which have been placed of record in the file.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (6,810,321) in view of Tzamaloukas (7,188,026).

6. With respect to claims 1 and 2, Cook discloses a vehicle traffic monitoring system and method using cellular telephone location and velocity data which includes the steps of obtaining and storing location of a plurality of GPS enabled cellular traffic probes, determining the speed of each of the plurality of cellular traffic probes (see at least figure 3, column 3, line 18 to column 5, line 6), selecting a subset of the plurality of cellular traffic probes corresponding to probes having a location in the monitored route segment, and determining the traffic flow for the monitored route segment on the basis of the determined speed of the probes in the selected subset (see at least figures 3-5 and the related text).

7. Cook does not explicitly disclose the assisted GPS enable cellular traffic probes. However, Tzamaloukas suggest a hierarchical floating car data network which suggest the use of the assisted GPS for detecting location of a vehicle when the GPS signals are unavaialbe and to be able to receive only intermittent GPS signals (see at least column 9, lines 11-28). It would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate the teaching of Tzamaloukas into the system of Cook in order to provide the system with the enhanced capability of detecting the location of the vehicle even when the GPS signals are weak or unavailable, thus improving the traffic flow monitoring system.

8. With respect to claims 2 and 3, Cook further discloses the step of requesting location information from a cellular network (see at least column 4, line 41 et seq.)

9. With respect to claims 4-19, the limitations of these claims have been noted in the rejections above and in the teachings of Cook and Tzamaloukas. They are therefore considered rejected as set forth above.

### ***Conclusion***

10. All claims are rejected.
11. The following references are cited as being of general interest: Myr (6,577,946), Feldman et al. (6,587,781), Yamane et al. (6,708,085), Rosen et al. (7,228,224), Cayford (7,269,507), Goto et al. (2003/0225668), Scott (2004/0010368), Burr et al. (2006/0122846), Atkinson et al. (CA 2,429,659), Lang (CA 2,391,605) and Lapidot et al. (WO 02/25617).
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Tan Q. Nguyen, whose telephone number is (571) 272-6966. The examiner can normally be reached on Monday-Thursday from 6:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (571) 272-6956.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to the Official Fax Center: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 20, 2009

**/TAN QUANG NGUYEN/**  
*Primary Examiner*  
*Art Unit 3661*

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